



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 27, 1998

Mr. John Steiner
Division Chief
City of Austin
P.O. Box 1546
Austin, Texas 787 67-1546

OR98-2045

Dear Mr. Steiner:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 117683.

The City of Austin (the "city") received a request for twelve categories of information related to a June 9, 1997 incident at Walnut Creek Pool, including rules, procedure, standards, and qualification of personnel at the pool. You claim that the submitted file which consists of the city's documentation and investigation of the incident is excepted from required public disclosure by section 552.103 of the Government Code. We have considered the exception you claim and have reviewed the documents at issue.

When asserting section 552.103(a), a governmental body must establish that the requested information relates to pending or reasonably anticipated litigation.¹ Thus, under section 552.103(a) a governmental body's burden is two-pronged. The governmental body must establish that (1) litigation is either pending or reasonably anticipated, and that (2) the requested information relates to that litigation. *See Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990).

You claim that litigation is reasonably anticipated because the allegedly injured parties have hired an attorney who has filed a notice claim with the city alleging damages. You have provided this office with the notice which you state was presented to the city

¹552.103(a) excepts from required public disclosure information:

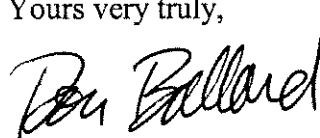
- (1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and
- (2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

pursuant to the Texas Tort Claims Act. It appears that city has denied the claim. In this instance, the parties allege damages concerning a near drowning. We conclude that you have made the requisite showing that litigation is reasonably anticipated. The submitted materials also relate to the anticipated litigation. Therefore, the city may withhold the submitted information under section 552.103.

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the anticipated litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982). We note, however, that some of the requested information may be confidential by law and must not be released even after litigation has concluded. If you receive a subsequent request for the information, you should use caution before releasing the information. Health & Safety Code § 773.091 (providing confidentiality for certain EMS records); Open Records Decision No. 598 (1991); Gov't Code § 552.352 (distribution of confidential information is criminal offense).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Don Ballard
Assistant Attorney General
Open Records Division

JDB/nc

Ref: ID# 117683

Enclosures: Submitted documents

cc: Daniel G. Covich
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(w/o enclosures)